

### **REMARKS**

In response to the Office Action dated November 30, 2007, Applicants respectfully request the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following comments. As a result of the amendments listed above, Claims 18-21, 23-28, 73, 74 and 76-85 remain pending. Claims 18, 73 and 82 have been amended. Claims 22, 75 and 86 have been canceled, without prejudice or disclaimer.

In the changes made by the current amendment, ~~deletions are shown by strikethrough~~, and additions are underlined or enclosed in [[double brackets]].

#### *Claims 18-21, 23-28, 73, 74 and 76-85 Are In Condition For Allowance*

Claims 18-21, 23-28, 73, 74 and 76-85 presently stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,717,379 to Ekholmer. Applicants respectfully submit that the claims, as amended, are allowable over the Ekholmer reference. Accordingly, reconsideration and allowance of the same are respectfully requested.

Independent Claim 18 recites a catheter including, among other recitations, an elongated support, a tubular non-porous membrane wrapped around a proximal portion of the support and a tubular porous membrane wrapped around a distal portion of the support. The non-porous membrane and the porous membrane have a substantially similar outer size and shape.

One non-limiting embodiment of the catheter of Claim 18 is illustrated in Figures 1-4. Advantageously, with such an arrangement, both the porous membrane portion and (a portion of) the non-porous portion can be introduced into the anatomy of a patient, with only the porous portion defining an infusion section of the catheter. Such an arrangement allows a fluid delivery catheter to be constructed without the need to create distinct fluid exit holes within the catheter body, such as by mechanical or laser drilling, for example. Rather, different materials (porous and non-porous) may be provided on a support to define the different sections (infusion and non-infusion) of the catheter.

In contrast, the catheter of the Ekholmer reference includes a non-porous tube 6 that includes a section having exit holes 4 passing therethrough. Thus, tube 6 defines both a non-infusion section and the infusion section of the catheter. In rejecting canceled Claim 22, the Examiner identifies connection member 8 as satisfying the non-porous membrane limitation.

Applicants respectfully disagree at least because even applying the broadest reasonable interpretation of the term "non-porous membrane," the connection member 8 would not be satisfy this limitation. In addition, amended Claim 18 recites that the non-porous membrane and the porous membrane have a substantially similar outer size and shape, as supported by the non-limiting embodiment of Figures 1-4. Clearly, the connection member 8 and the tube 6 of the catheter of the Ekholmer reference do not have a substantially similar outer size and shape. The connection member 8 is not suitable for placing within the anatomy of a patient and, thus, at least a proximal portion of the tube 6 must be non-porous.

Claims 19-21 and 23-28 depend from allowable Claim 18. These claims are allowable not only because they depend from an allowable claim, but upon their own merit as well. Reconsideration and allowance of Claims 19-21 and 23-28 are respectfully requested.

Independent Claim 73 recites a catheter including, among other recitations, an elongate support, a non-porous membrane and a porous membrane. Fluid introduced into the catheter exits through an entire length of the porous membrane.

As noted above, the catheter of the Ekholmer reference includes a tube 6 that defines both a non-infusion section of the catheter and an infusion section of the catheter along a length of the tube 6. Also, as noted, it would be impractical if not impossible to utilize the entire length of the tube 6 of the Ekholmer reference for infusion, while utilizing the connection member 8 as a non-infusion section of the catheter, as proposed by the Examiner. For at least this reason, Applicants submit that the Ekholmer reference does not render obvious the catheter of Claim 73.

Independent Claim 82 includes limitations similar to those discussed immediately above with respect to Claim 73 and is allowable for at least similar reasons. Claims 74, 76-81 and 83-85 are allowable, not only because they depend from one of allowable Claims 73 and 82, but upon their own merit as well. Reconsideration and allowance of Claims 73, 74 and 76-85 are respectfully requested.

*No Disclaimers or Disavowals*

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather,

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any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

#### CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims and specification. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney, Curtiss Dosier at (949) 721-7613 (direct line), to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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